

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
EASTERN WASHINGTON REGION
STATE OF WASHINGTON

ROGER D. WHITTEN, CHRIS SCHETTLE,
AND DERRICK HANSEN,

Petitioners,

v.

SPOKANE COUNTY,

Respondent.

Case No. 14-1-0006c

FINAL DECISION AND ORDER

SYNOPSIS

Petitioners challenged Spokane County's adoption of Resolution No. 14-0401 which allows weddings and social events in the Small Tract Agricultural zone in Spokane County. The Board found that the County's new zoning regulations relating to nonagricultural accessory uses comply with the GMA requirements and supplements them with additional County standards designed to protect Small Tract Agriculture areas of the County, in compliance with GMA requirements to preserve and protect agricultural lands.

I. PROCEDURAL BACKGROUND

The initial Petition for Review was filed on June 12, 2014 by Roger D. Whitten. Subsequent petitions regarding the same County resolution were filed by Derrick Hansen and Chris Schettle on June 15, 2014. All three cases were consolidated on July 18, 2014. The Hearing on the Merits was held on December 9, 2014 in Spokane, Washington with the Eastern Washington Regional Panel comprised of Presiding Officer Chuck Mosher and Board Members Raymond Paoella and Nina Carter. The parties participating in the Hearing on the Merits were: Petitioners Roger D. Whitten, Derrick Hansen, and Chris Schettle appearing pro se, and Respondent Spokane County appearing through

Prosecuting Attorneys Dan Catt and David Hubert, present telephonically. The hearing provided the Board an opportunity to ask questions clarifying important facts in the case and develop a better understanding of the legal arguments of the parties.

II. PRESUMPTION OF VALIDITY, BURDEN OF PROOF, AND STANDARD OF REVIEW

Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations, and amendments to them, are presumed valid upon adoption.¹ This presumption creates a high threshold for challengers as the burden is on the petitioners to demonstrate that any action taken by the local jurisdiction is not in compliance with the GMA.²

The Board is charged with adjudicating GMA compliance and, when necessary, invalidating noncompliant plans and development regulations.³ The scope of the Board's review is limited to determining whether a local jurisdiction has achieved compliance with the GMA only with respect to those issues presented in a timely petition for review.⁴ The GMA directs that the Board, after full consideration of the petition, shall determine whether there is compliance with the requirements of the GMA.⁵ The Board shall find compliance unless it determines that the local jurisdiction's action is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA.⁶ In order to find the local jurisdiction's action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been committed."⁷

¹ RCW 36.70A.320(1) provides: [Except for the shoreline element of a comprehensive plan and applicable development regulations] "comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption."

² RCW 36.70A.320(2) provides: [Except when city or county is subject to a Determination of Invalidity] "the burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this chapter is not in compliance with the requirements of this chapter."

³ RCW 36.70A.280, RCW 36.70A.302.

⁴ RCW 36.70A.290(1).

⁵ RCW 36.70A.320(3).

⁶ RCW 36.70A.320(3).

⁷ *City of Arlington v. CPSGMHB*, 162 Wn.2d 768, 778, 193 P.3d 1077 (2008) (Citing to *Dept. of Ecology v. PUD District No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646 1993); *See also, Swinomish Tribe v. WWGMHB*, 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007); *Lewis County v. WWGMHB*, 157 Wn.2d 488, 497-98, 139 P.3d 1096 (2006).

1 In reviewing the planning decisions of local jurisdictions, the Board is instructed to
2 recognize “the broad range of discretion that may be exercised by counties and cities” and
3 to “grant deference to counties and cities in how they plan for growth.”⁸ However, the
4 County’s actions are not boundless; their actions must be consistent with the goals and
5 requirements of the GMA.⁹

6 Thus, the burden is on Petitioners to overcome the presumption of validity and
7 demonstrate that the challenged action taken by the County is clearly erroneous in light of
8 the goals and requirements of the GMA.
9

10 III. BOARD JURISDICTION

11 The Board finds that the Petitions for Review was timely filed pursuant to RCW
12 36.70A.290(2). The Board finds that Petitioners have standing to appear before the Board,
13 pursuant to RCW 36.70A.280(2). The Board finds that it has jurisdiction over the subject
14 matter of the petition pursuant to RCW 36.70A.280(1)(a).
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17 IV. CHALLENGED LEGISLATIVE ACTION

18 Petitioners challenge Spokane County’s Resolution No. 14-0401, which amended
19 Spokane County’s zoning code to allow wedding and social events in the Small Tract
20 Agricultural zone in Spokane County.
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25 ⁸ RCW 36.70A.3201 provides, in relevant part: “In recognition of the broad range of discretion that may be
26 exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the
27 boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements
28 and goals of this chapter. Local comprehensive plans and development regulations require counties and cities
29 to balance priorities and options for action in full consideration of local circumstances. The legislature finds that
30 while this chapter requires local planning to take place within a framework of state goals and requirements, the
31 ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and
32 implementing a county's or city's future rests with that community.”

⁹ *King County v. CPSGMHB*, 142 Wn.2d 543, 561, 14 P.2d 133 (2000) (Local discretion is bounded by the
goals and requirements of the GMA). See also, *Swinomish*, 161 Wn.2d at 423-24. In *Swinomish*, as to the
degree of deference to be granted under the clearly erroneous standard, the Supreme Court has stated: “The
amount [of deference] is neither unlimited nor does it approximate a rubber stamp. It requires the Board to give
the [jurisdiction’s] actions a ‘critical review’ and is a ‘more intense standard of review’ than the arbitrary and
capricious standard.” *Id.* at 435, n. 8.

V. DISCUSSION AND ANALYSIS

In its analysis of the issues presented by the Petitioners, the central argument of this case is whether the County's zoning changes provided for in Spokane County's Resolution No. 14-0401 helps or harms agricultural lands of long term commercial significance. Although the following six issues consider various aspects of this concern, the major analysis of whether the County is complying with the GMA is presented under issue 1.

ISSUE 1: Did Spokane County's adoption of Resolution No. 14-0401 and the change in its zoning code violate RCW 36.70A.177 and WAC 365-196-815 because the changes are inconsistent with the size, scale and intensity of agricultural use, fail to protect agriculture, and fail to conserve agricultural lands of long term commercial significance?

Applicable Law:

RCW 36.70A.177

Agricultural lands — Innovative zoning techniques — Accessory uses.

(1) A county or a city may use a variety of innovative zoning techniques in areas designated as agricultural lands of long-term commercial significance under RCW 36.70A.170. The innovative zoning techniques should be designed to conserve agricultural lands and encourage the agricultural economy. **Except as provided in subsection (3) of this section**, a county or city should encourage nonagricultural uses to be limited to lands with poor soils or otherwise not suitable for agricultural purposes.

(2) Innovative zoning techniques a county or city may consider include, but are not limited to:

(a) Agricultural zoning, which limits the density of development and restricts or prohibits nonfarm uses of agricultural land and may allow accessory uses, including nonagricultural accessory uses and activities, that support, promote, or sustain agricultural operations and production, as provided in subsection (3) of this section;

(3) Accessory uses allowed under subsection (2)(a) of this section shall comply with the following:

1 (a) **Accessory uses shall be located, designed, and operated so as to**
2 **not interfere with, and to support the continuation of, the overall**
3 **agricultural use of the property and neighboring properties,** and shall
4 comply with the requirements of this chapter;

5 (b) Accessory uses may include: . . .

6 (i) Agricultural accessory uses and activities, including but not limited to
7 the storage, distribution, and marketing of regional agricultural products from
8 one or more producers, agriculturally related experiences, or the production,
9 marketing, and distribution of value-added agricultural products, including
10 support services that facilitate these activities; and

11 (ii) **Nonagricultural accessory uses and activities as long as they are**
12 **consistent with the size, scale, and intensity of the existing agricultural**
13 **use of the property and the existing buildings on the site.**

14 Nonagricultural accessory uses and activities, including new buildings,
15 parking, or supportive uses, shall not be located outside the general area
16 already developed for buildings and residential uses and shall not otherwise
17 convert more than one acre of agricultural land to nonagricultural uses; and

18 (c) Counties and cities have the authority to limit or exclude accessory
19 uses otherwise authorized in this subsection (3) in areas designated as
20 agricultural lands of long-term commercial significance.

21 (4) This section shall not be interpreted to limit agricultural production on
22 designated agricultural lands.

23 **WAC 365-196-815**

24 **Conservation of natural resource lands.**

25 (1) Requirements.

26 (a) Counties and cities planning under RCW 36.70A.040 **must adopt**
27 **development regulations that assure the conservation of designated**
28 **agricultural, forest, and mineral lands of long-term commercial**
29 **significance.**

30 (b) "Conservation" means measures designed to assure that the natural
31 resource lands will remain available to be used for commercial production of
32 the natural resources designated. Counties and cities should address two
components to conservation:

(i) Development regulations must prevent conversion to a use that
removes land from resource production. Development regulations must not

1 allow a primary use of agricultural resource lands that would convert those
2 lands to nonresource purposes. Accessory uses may be allowed, consistent
3 with subsection (3)(b) of this section. . .

4 **(ii) Development regulations must assure that the use of lands**
5 **adjacent to designated natural resource lands does not interfere with**
6 **the continued use, in the accustomed manner and in accordance with**
7 **the best management practices, of these designated lands for the**
8 **production of food, agricultural products, or timber, or for the**
9 **extraction of minerals. . . .**

10 (c) Accessory uses on agricultural lands of long-term commercial
11 significance:

12 (i) Counties may allow certain accessory uses on agricultural lands of
13 long-term commercial significance. Accessory uses can promote the
14 continued use of agricultural lands by allowing accessory uses that add value
15 to agricultural products. **Accessory uses can also promote the continued**
16 **use of agricultural lands by allowing farming operations to generate**
17 **supplemental income through unrelated uses, provided they are**
18 **compatible with the continued use of agricultural land of resource**
19 **production;**

20 **(ii) Development regulations must require accessory uses to be**
21 **located, designed, and operated so as to not interfere with, and to**
22 **support the continuation of, the overall agricultural use of the property**
23 **and neighboring properties, and must comply with the requirements of the**
24 **act;**

25 (iii) Accessory uses may include:

26 (A) Agricultural accessory uses and activities, including but not limited to
27 the storage, distribution, and marketing of regional agricultural products from
28 one or more producers, agriculturally related experiences, or the production,
29 marketing, and distribution of value-added agricultural products, including
30 support services that facilitate these activities; and

31 **(B) Nonagricultural accessory uses and activities as long as they are**
32 **consistent with the size, scale, and intensity of the existing agricultural**
33 **use of the property and the existing buildings on the site.**

Nonagricultural accessory uses and activities, including new buildings,
parking, or supportive uses, shall not be located outside the general area
already developed for buildings and residential uses and shall not otherwise
convert more than one acre of agricultural land to nonagricultural uses; and

(C) Counties and cities have the authority to limit or exclude accessory
uses otherwise authorized in this subsection in areas designated as
agricultural lands of long-term commercial significance. . .

(iv) Any innovative zoning techniques must not limit agricultural
production on designated agricultural resource lands.

1 **Position of the Parties**

2 Petitioners contend that the change in Spokane County zoning regulations allow for
3 uses which are incompatible with the GMA's requirements that agricultural lands be retained
4 and protected. Petitioners contend that the uses allowed for are not consistent in size,
5 scale and intensity with the existing agricultural uses on the property and conflict with and
6 disrupt continued farming in the surrounding Small Tract Agricultural areas of Spokane
7 County.
8

9 Respondent contends that because wedding and social events provide additional
10 income for small farm properties, the new policy supports small farms and is consistent with
11 the Growth Management Act and with County planning policies. Respondent states that the
12 County's regulations do not allow for new structures, only the permitting of events in the
13 Small Tract Agricultural areas of the County.
14

15 **Board Analysis of Issue 1**

16 At the Hearing on the Merits, Spokane County acknowledged that Resolution No. 14-
17 0401 does not meet the "poor soils" standard of RCW 36.70A.177(1), as interpreted by the
18 Supreme Court in the "*Soccer Fields*" case.¹⁰ So the real issue before the Board is whether
19 Resolution No. 14-0401 can meet the "nonagricultural accessory use" standards of RCW
20 36.70A.177(2) and .177(3).
21

22 Petitioners have the burden of proof to adduce evidence in the record demonstrating
23 non-compliance with RCW 36.70A.177(2)(a), 36.70A.177(3)(a), and 36.70A.177(3)(a)(ii). To
24 prove non-compliance, Petitioners must point to evidence demonstrating that Resolution
25 No. 14-0401 allows "accessory uses" that fail to satisfy the following elements:
26

27 (1) "support, promote, or sustain agricultural operations and production;"

28 (2) "are located, designed, and operated so as to not interfere with . . . overall
29 agricultural use of the property and neighboring properties;"

30 (3) "consistent with the size, scale, and intensity of the existing agricultural use;"
31
32

¹⁰ *King County v. Central Puget Sound Growth Management Hearings Board (Soccer Fields)*, 142 Wn.2d 543, 560-561 (2000).

1 (4) "shall not be located outside the general area already developed for buildings
2 and residential uses;"

3 (5) "shall not otherwise convert more than one acre of agricultural land to
4 nonagricultural uses."

5 Spokane County Planning Staff state that the change in development regulations
6 related to Resolution No 14-0401 was initiated "[i]n response to several code enforcement
7 complaints, specifically in the Green Bluff area."¹¹ Petitioners state that even though the
8 primary focus of these new allowed uses are in the Green Bluff area, the revised regulations
9 will apply to the full 52,804 acres zoned Small Tract Agriculture, not just the 3,569 acres in
10 the Green Bluff area. Petitioners point out that the Green Bluff area is a fruit tree area but
11 the rest of the Small Tract zoning is primarily devoted to wheat and hay production. As cited
12 by the Petitioner: "The farming practices of a large scale wheat or hay producer are
13 different than the farming practices of an orchardist on ten acres. The issues of chemical
14 drift, dust, noise, traffic congestion and trespass all play out much differently on the 93% of
15 the STA that Spokane County is ignoring."¹²

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18 The Spokane County Comprehensive Plan well describes the County's Small Tract
19 Agriculture area *inter alia*:

- 20 • Small Tract Agriculture areas are primarily devoted to grain, fruit, berry,
21 vegetable, dairies, Christmas trees, and forage crop production. Non-
22 resource-related uses other than rural residences are generally
23 prohibited.
- 24 • This type of agriculture is suitable to small-scale operations and may be
25 conducted on relatively small parcels.
- 26 • Seasonable festivals and other activities associated with the marketing of
27 agricultural products will be common occurrences in these areas.
- 28 • Governmental services in natural resource areas should include only
29 those services necessary to support the production of food and fiber and
30 the extraction of minerals. If higher levels of service are provided
31 residential uses will be encouraged to locate in resource areas.
32 Experience has shown that proliferation of residential uses in resource
areas will inevitably lead to the demise of the resource activities. **The**

¹¹ Ex. 27 for Petitioner's Prehearing Brief, p. 7 of 58.

¹² Petitioners' Reply Brief, p.1.

government services that are appropriate in resource land areas include volunteer fire departments, minimal police protection and rural roads designed for transporting commodities and equipment.¹³

- Small-scale farming is commercially viable, especially when located near the urban area because of direct marketing opportunities which allow small-scale producers to compete with large-scale producers.¹⁴

Petitioners contend that an event center business can easily be negatively impacted by chemicals, dust, and noise from neighboring agricultural practices and is an inherent conflict of interest with the agricultural use.¹⁵ “When conflicts arise with other uses in an agricultural area, the agricultural viability of the area often goes down. Over time, the cumulative burden becomes unbearable for some producers, resulting in further conversion of agricultural lands and even greater burdens on the remaining producers.”¹⁶

In testimony before the Planning Commission on the proposed change to allow for weddings and social events in the Small Tract Agriculture area, one event venue owner indicated that she had been holding weddings on her property and has planted 500 Christmas and apple trees in order to be able to hold these events.¹⁷ She sent a letter to the Planning Commission stating that she spent years researching and setting up her wedding venue.¹⁸ This property owner has built a large, open sided structure for use with weddings.¹⁹ Overall, this arguably indicates that the County’s challenged ordinance potentially allows the wedding event business as the primary use of this property.

The Board notes that even though the County contends that its resolution and zoning changes only apply to events held in existing structures and do not allow new construction of wedding/social event “centers,” the changes allowed do impact the way these lands are used, and could potentially negatively affect, not protect, the continued use of the Small Tract Agriculture area lands for agriculture. In testimony before the Planning Commission,

¹³ Ex. 27, Staff Report to the Planning Commission, Public Hearing on May 30, 2013, pp. 2-3.

¹⁴ *Id.*

¹⁵ Petitioner’s Prehearing Brief, p. 8.

¹⁶ Eastern Washington GMHB Case No. 95-1-0009, *City of Ellensburg v. Kittitas County*, Final Decision and Order, p. 9.

¹⁷ Ex. 6, Petitioners’ Prehearing Brief, Spokane County Planning Commission meeting of March 28, 2013, p. 5.

¹⁸ Ex. 103, Petitioners’ Prehearing Brief, pp. 19-21.

¹⁹ Petitioners’ Reply Brief, p. 4.

1 several residents commented on the conflict of event center activities with their normal
2 farming practices, movement of farm equipment on County roads and late night noise
3 interrupting evening activities and sleep.²⁰ Dangerous chemicals could also be an important
4 factor. One person testified that:

5 Often times a farmer will start spraying chemicals on a calm day, only to see
6 the wind increasing as the day progresses. A little wind is not a problem in a
7 proper ag zone, but an ag zone that allows a wedding party next to a working
8 wheat field will interfere with normal agricultural practices. Even though
9 chemical drift is unavoidable, it is nevertheless a violation of the law. The
10 farmer is well aware of the liabilities associated with farming next to urban
11 uses. It is probable that farmers will choose not to farm next to a
 wedding/event center.²¹

12 Although several people testified against allowing events, several others testified that
13 allowing events will help farmers in the Small Tract Agricultural areas obtain needed
14 additional income and that it would not negatively impact farming operations.²²

15 After several public hearings considering alternative approaches to accommodating
16 wedding and social events, in its October 31, 2013 meeting the Spokane County Planning
17 Commission recommended the “no action alternative.”²³ In rejecting alternatives 2, 3 and
18 4, which allowed for wedding and social events, the Commission expressed concern about
19 impacts arising from wedding/event center operations such as traffic, parking, noise, light,
20 number of events, fire protection, water supply, narrow rural roads, and alcohol consumption
21 associated with wedding/event center operations.²⁴ Based on Planning Commission inputs
22 and public comments, the County Commissioners later revised the language in alternative 3
23 and approved its use without sending it back to the Planning Commission for further
24 consideration.²⁵

25 In commenting on the size, scale, and Intensity of event activities, the Petitioners
26 claim that the rental charge for an event venue is typically \$3,000 per event, and if the
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28
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30 ²⁰ Ex. 29, Planning Commission meeting of May 30, 2013, pp. 4-6.

31 ²¹ Ex. 196, p. 31 of 58.

32 ²² Ex. 15, pp. 1-3.

²³ Ex. 61, p. 550.

²⁴ *Id.*

²⁵ Resolution No. 14-0401, Ex. 322, pp. 1-4.

1 County allows 25 events a year, it could yield \$125,000 per year. For a 10-acre parcel, that
2 amounts to \$12,500 an acre, compared to the annual income for most of the Small Tract
3 Agricultural zone at \$300 to \$350 an acre.²⁶ Petitioners allege that it is unlikely that any
4 parcel in the Small Tract Agriculture area meets the needed requirement to make the event
5 use truly an accessory use.²⁷ They state that the challenged action will sanction a
6 nonagricultural commercial business on agricultural lands that far exceeds the economic
7 scale of the existing agricultural use of the property.²⁸

9 The Board finds that under some circumstances, weddings and social events in the
10 Small Tract Agriculture area could harm agriculture by allowing nonagricultural businesses
11 that drive up the cost of the agricultural land. As stated in a 1996 GMHB case:

12 A primary factor in economic viability for agricultural purposes is the County's
13 actions in zoning. If zoning allows a higher use, such as a residential
14 subdivision on agricultural land, the price paid for that land will increase to
15 the point that debt service or return on investment expectations preclude
16 economically viable agricultural activity. One of the purposes of the GMA is
17 to encourage preservation of agricultural lands. If the landowner perceives a
18 potential for a higher use allowable by the county, that perception itself will
19 increase land prices to ensure the land is no longer economically viable for
20 agricultural purposes.²⁹

21 The Board further finds that another consideration regarding the size, scale, and
22 intensity of the nonagricultural accessory use is the number of people allowed to attend
23 such events. Allowing for 200 attendees for each of 25 events permits up to 5,000 people
24 to attend weddings or social events for each of the permitted venues. If the maximum
25 number of events were approved, this would appear to be out of size, scale, and intensity of
26 character with this small tract agriculture area which is only served with limited
27 governmental services.

28 Even though the uses allowed by the County's revised zoning changes might
29 negatively impact agriculture under some circumstances, as cited above, the Board notes
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31 ²⁶ Petitioner's Prehearing Brief, p. 16.

32 ²⁷ *Id.*

²⁸ *Id.*

²⁹ *City of Ellensburg v. Kittitas County*, Eastern Washington Growth Management Board, Case No. 95-1-0009, Final Decision and Order, p. 18, May 7, 1996.

1 that the County did revise its regulations in an attempt to conform with recent legislative
2 amendments to RCW 36.70A.177. The Board finds that the County did include the key
3 protective criteria and provisions of RCW 36.70A.177 and WAC 365-196-815 in its new
4 zoning code regulations. In particular, the following performance standards are part of its
5 new temporary use requirements in Spokane County Zoning Code Chapters 14.616 and
6 14.506 relating to "Small Tract Agricultural Wedding/Social Events in the Small Tract
7 Agricultural (STA) Zone":
8

- 9 • a. The property shall retain its agricultural identity and its capacity as
10 agricultural land.
- 11 • c. The temporary use must be an accessory use to the parcel or lot and
12 cannot be the primary use on the parcel or lot.
- 13 • e. The temporary use shall support, promote, or sustain agricultural
14 operations and production as provided in RCW 36.70A.177(3).
- 15 • f. The temporary use shall be located, designed and operated so as to not
16 interfere with, and to support the continuation of the overall agricultural
17 use of the property and neighboring properties.
- 18 • i. The temporary use shall be consistent with the size, scale and intensity
19 of the existing agricultural use of the property and existing buildings on
20 the site. The area devoted to the temporary use shall not be located
21 outside the general area already developed for buildings and residential
22 uses, and shall not otherwise convert more than one acre of agricultural
23 land to nonagricultural uses.³⁰

24 Since the County's regulations clearly include the key provisions and protective
25 criteria of the recent legislative amendments regarding agricultural accessory uses, and
26 supplements them with additional standards which relate to the public services that must be
27 met, the Board concludes that the County has complied with the Growth Management Act.
28 As the Respondent points out, rather than allowing for permanent changes in the use of
29 land in the Small Tract Agriculture area, the allowed action is temporary, may only continue
30 for a period of up to six months, may not involve the erection of a substantial structure, and
31 is revocable.³¹
32

³⁰ Index No. 322, Resolution No. 14-0401, Ex. B for Alternative 3, pp. 6-7.

³¹ Spokane County Prehearing Brief, p. 6.

1 Even though the Board is concerned that some newly allowed uses may jeopardize
2 agricultural lands, that is related to the effectiveness of County implementation of those
3 regulations, which now comply with the GMA. In the Hearing on the Merits, the Respondent
4 stated that implementation of the zoning regulations is a land use permitting issue, a Land
5 Use Petition Act (RCW Chapter 36.70C) issue, which is not under the jurisdiction of the
6 Growth Management Hearings Board. As such, the Board notes that it will be up to the
7 neighbors of the lands near to event venues to assure that the County's agricultural
8 protective regulations are properly implemented and enforced.
9

10 When development regulations are compliant with the express requirements of the
11 GMA, the Growth Board is required to grant deference to counties and cities in how they
12 plan for growth.³² With regard to issue 1, Petitioners have failed to carry their burden of
13 proof in demonstrating that the County's zoning regulations approved by Resolution No. 14-
14 0401 do not comply with RCW 36.70A.177 or WAC 365-196-815.
15

16 **ISSUE 2:** Did Spokane County's adoption of Resolution No. 14-0401 and the change in its
17 zoning code violate RCW 36.70A.130(1)(d) because it is inconsistent with Spokane County
18 Planning Policies?
19

20
21 **Applicable Law:**

22
23 **RCW 36.70A.130**

24 **Comprehensive plans – Review procedures and schedules –**
25 **Amendments**

26 (1)(d) Any amendment of or revision to a comprehensive land use plan shall
27 conform to this chapter. Any amendment of or revision to development
28 regulations shall be consistent with and implement the comprehensive plan.

29
30 **WAC 365-196-210(7)** defines consistency as follows:

31 "Consistency" means that no feature of a plan or regulation is incompatible
32 with any other feature of a plan or regulation. Consistency is indicative of a

³² RCW 36.70A.3201, *Quadrant Corp. v. Central Puget Sound Growth Management Hearing Bd.*, supra.

capacity for orderly integration or operation with other elements in a system.

Spokane Planning Policies

NR.2³³ Provide a level of governmental service consistent with long-term preservation and protection of natural resource lands.³⁴

Commercial and Industrial Use on Natural Resource Lands

NR.3.20 Retail sales facilities and activities shall not be allowed on natural resource lands except as accessory to the sale of commodities produced on site, sale of sand and gravel associated with on-site mining activity and home business or industries which do not conflict with natural resource activities.

Commercial Development for Small Tract Agriculture

Spokane County recognizes the importance of small tract agriculture to the local economy and as a defining feature of the local character and identity. Small-scale farming is commercially viable, especially when located near the urban area because of the direct marketing opportunities which allow small-scale producers to compete with large-scale producers. The following policies are intended to form a framework for recognition of small-scale farming's special needs for **protective and flexible regulations to continue the tradition of small tract agriculture in Spokane County.**

NR.3.21 Seasonal retail sales facilities and activities shall be allowed in small tract agricultural areas as accessory uses directly related to the **sale of farm commodities produced on the site.**

NR.3.22 Encourage local production and consumption of food and farm products through public markets and festivals located on small tract agricultural lands, provided such activities do not conflict with agricultural practices and provided that adequate provisions are made for traffic control, off-street parking, sanitation, noise control and dust control.

NR.3.23 Allow direct farm-to-market agricultural distribution including on-farm sale of agricultural products.

The other Spokane County Planning Policies cited by the Petitioners generally repeat the requirement that natural resource lands, including agriculture, must be maintained and

³³ NR stands for Natural Resource Lands, Ch. 4 of the Spokane County Comprehensive Plan.

³⁴ These policies are listed in Tab 27, p. 9 of 58, which is a staff report to the Planning Commission, dated May 30, 2013.

1 protected and that adjacent properties and the rural character of the areas must be
2 protected.

3
4 **Position of the Parties**

5 Petitioners contend that allowing weddings and social events in the Small Tract
6 Agriculture zone is not consistent with the County's planning policies which support the
7 protection of agricultural lands, small scale agriculture and the rural character of the area.

8 Respondent contends that the changed regulations support the Small Tract
9 Agriculture areas by supplementing the income of small farmers to help them continue
10 farming activities, which supports the Small Tract agriculture areas. In addition, Respondent
11 states that the key policies cited by the Petitioners related to the sale of farm products in the
12 Small Tract Agriculture area are permissive in nature and encourage such sales but do not
13 limit other uses, so allowing for events does not conflict with these policies.
14

15
16 **Board Analysis of Issue 2**

17 In order to satisfy their burden of proof to show a development regulation/plan
18 inconsistency, Petitioners must show that language in the challenged resolution is
19 *inconsistent with* language in the comprehensive plan. This Board has held that
20 "Consistency means comprehensive plan provisions are compatible with each other. One
21 provision may not thwart another."³⁵
22

23 Even though some uses allowed by the County's revised zoning changes might
24 negatively impact agriculture, as cited in issue 1 above, the Board notes that the County did
25 revise its regulations to conform with Growth Management Act language and requirements.
26 The Board notes that the County has included the key provisions and protective criteria of
27 RCW 36.70A.177 and WAC 365-196-815 in its new zoning code regulations. In particular,
28 the following performance standards are part of its new temporary use requirements:
29
30
31
32

³⁵ *Five Mile Prairie Neighborhood Association v. Spokane County*, EWGMHB Case No. 12-1-0002, Final Decision and Order (August 23, 2012), at 10.

- 1 • a. The property shall retain its agricultural identity and its capacity as
2 agricultural land. . .
- 3 • c. The temporary use must be an accessory use to the parcel or lot and
4 cannot be the primary use on the parcel or lot. . .
- 5 • e. The temporary use shall support, promote, or sustain agricultural
6 operations and production as provided in RCW 36.70A.177(3).
- 7 • f. **The temporary use shall be located, designed and operated so as**
8 **to not interfere with, and to support the continuation of the overall**
9 **agricultural use of the property and neighboring properties. . . .**
- 10 • i. The temporary use shall be consistent with the size, scale and intensity
11 of the existing agricultural use of the property and existing buildings on
12 the site. The area devoted to the temporary use shall not be located
13 outside the general area already developed for buildings and residential
14 uses, and shall not otherwise convert more than one acre of agricultural
15 land to nonagricultural uses.³⁶

16 The County's new zoning regulations include the key provisions and protective
17 criteria of the GMA requirements regarding agricultural lands and nonagricultural accessory
18 uses, and supplements them with additional standards which relate to the public services
19 that need to be provided. The Board finds that Petitioners have not proven that the
20 County's new regulations are inconsistent with the County's policies regarding
21 nonagricultural accessory uses which "are intended to form a framework for recognition of
22 small-scale farming's special needs for protective and flexible regulations to continue the
23 tradition of small tract agriculture in Spokane County." ³⁷

24 Although the Petitioners have shown that there are potential negative impacts to
25 agriculture if the protective regulations are not enforced, the Board finds that the new
26 regulations are not inconsistent with the County's Planning Policies and the GMA. The
27 Board finds and concludes that Petitioners have not carried their burden of proof in showing
28

31

32 ³⁶ Index No. 322, Resolution No. 14-0401, Ex. B for Alternative 3, pp. 6-7.

³⁷ These policies are listed in Tab 27, p. 9 of 58, which is a staff report to the Planning Commission, dated May
 30, 2013.

1 that the County's amendment to its Development Regulations in Resolution 14-0401
2 violated RCW 36.70A.130(1)(d), and Spokane County Planning Policies.

3
4 **ISSUE No. 3:** Did the County's adoption of Resolution No. 14-0401 and the change in its
5 zoning code violate RCW 36.70A.060(1)(b) because they did not contain a notice that the
6 subject property is within or near designated agricultural lands?
7

8 **Applicable Law:**

9 **RCW 36.70A.060**

10 **Natural resource lands and critical areas — Development regulations.**

11 (1)(b) Counties and cities shall require that all plats, short plats, development
12 permits, and building permits issued for development activities on, or within
13 five hundred feet of, lands designated as agricultural lands, forest lands, or
14 mineral resource lands, contain a notice that the subject property is within or
15 near designated agricultural lands, forest lands, or mineral resource lands on
16 which a variety of commercial activities may occur that are not compatible
17 with residential development for certain periods of limited duration.

18 **Position of the parties**

19 Petitioners contend that the County does not require a notice in its permit application
20 process informing the applicant that the surrounding properties are agricultural properties
21 that are related to farm related noise, spray, and dust.³⁸

22 Respondent notes that all of the properties are in an agricultural zone, not a
23 residential area, and such a notice is unnecessary. In addition, the need for such notices is
24 based on property development and sales, not temporary uses.³⁹
25

26 **Board Analysis of Issue 3:**

27 The Board notes that RCW 36.70A.060 is focused on Development Regulations and
28 subsection (1)(b) is intended to protect agricultural lands by requiring that notices be
29 provided for all development activity next to agricultural lands such as plats, short plats,
30 development permits, and building permits issued to alert developers and property owners
31
32

³⁸ Petitioner's Prehearing Brief, p. 23.

³⁹ Spokane County's Prehearing Brief, pp. 24-25.

1 that agricultural activities may occur on next door properties that are not compatible with
2 residential development. Clearly, agricultural activities can involve loud noises for extended
3 periods, irritating and potentially dangerous sprays and large amounts of dust which may
4 not be compatible with such development.

5 The Board notes that the required notices make sense in the case of next door,
6 residential development but not when the next door activity is a temporary use and all the
7 parcels involved are zoned for agriculture.

8 The Board concludes that the Petitioners have failed to carry their burden of proof in
9 demonstrating that adoption of Resolution No. 14-1-0401 violated RCW 36.70A.060.
10

11
12 **ISSUE No. 4:** Did Resolution No. 14-0401 and the change in zoning code violate RCW
13 36.70A.070 because it did not prohibit development approval if the development causes the
14 level of service on roads to decline below comprehensive plan standards.⁴⁰
15

16 **Applicable Law:**

17 **RCW 36.70A.070**

18 **Comprehensive plans — Mandatory elements.**

19
20 The comprehensive plan of a county or city that is required or chooses to
21 plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive
22 text covering objectives, principles, and standards used to develop the
23 comprehensive plan. The plan shall be an internally consistent document and
24 all elements shall be consistent with the future land use map. A
25 comprehensive plan shall be adopted and amended with public participation
as provided in RCW 36.70A.140.

26 Each comprehensive plan shall include a plan, scheme, or design for each of
27 the following: . . .

28 (6) A transportation element that implements, and is consistent with, the land
29 use element. . .

30 (b) After adoption of the comprehensive plan by jurisdictions required to plan
31 or who choose to plan under RCW 36.70A.040, **local jurisdictions must**
32

⁴⁰ Petitioner's Prehearing Brief, pp. 24-26.

1 **adopt and enforce ordinances which prohibit development approval if**
2 **the development causes the level of service on a locally owned**
3 **transportation facility to decline below the standards adopted in the**
4 **transportation element of the comprehensive plan,** unless transportation
5 improvements or strategies to accommodate the impacts of development are
6 made concurrent with the development. These strategies may include
7 increased public transportation service, ride sharing programs, demand
8 management, and other transportation systems management strategies. For
9 the purposes of this subsection (6), "concurrent with the development"
10 means that improvements or strategies are in place at the time of
11 development, or that a financial commitment is in place to complete the
12 improvements or strategies within six years.

13 **Position of the Parties**

14 Petitioners contend that the special events authorized by this zoning change will
15 cause additional road congestion and affect emergency services, and this will cause local
16 services to exceed the County's level of service standards.

17 Respondent contends that the Petitioner has not demonstrated that the County's
18 standards will be violated.

19 **Board Analysis of Issue 4:**

20 Petitioner's arguments on this issue are two fold, first, that the County has failed to
21 adopt a transportation concurrency ordinance in its Comprehensive Plan and, second, there
22 are no County provisions on how to enforce parking and traffic conditions that are already a
23 known problem.⁴¹ The Board notes that the Petitioner's concern about the lack of a
24 concurrency ordinance in the County's Comprehensive Plan is without merit, since it should
25 have been brought within 60 days of a legislative adoption or failure to adopt required
26 development regulations.⁴² Also, it is illogical for the Petitioners to contend that this new
27 use will violate the County standards at the same time as arguing that standards have not
28 been established. Clearly, the Petitioners have not demonstrated that either the County's
29 Comprehensive Plan transportation concurrency standards have been violated or that RCW
30 36.70A.070 has been violated.

31 _____
32 ⁴¹ Petitioner's Prehearing Brief, pp. 25-27.

⁴² RCW 36.70A.290.

1 The County also points out the several permit condition requirements that are
2 designed to control vehicle use and minimize the impact of the permitted activities on
3 transportation and other public services, including the following requirements: providing for
4 off-street parking on the property where the activity is; the provision of safe and efficient
5 ingress and egress from the event property; and the need to comply with all special
6 conditions imposed by the fire marshal.⁴³
7

8 The Board concludes that the Petitioners have failed to carry their burden of proof in
9 demonstrating that adoption of Resolution No. 14-1-0401 violated RCW 36.70A.070.

10
11 **ISSUE No. 5:** Did Spokane County's adoption of Resolution No. 14-0401 and the change in
12 its zoning code violate RCW 36.70A.177 and WAC 365-196-815 because the changes
13 included provisions which lack enforceable criteria to ensure compliance?
14

15 **Applicable Law:**

16 The specific sections of the law for RCW 36.70A.177 and WAC 365-196-815 are
17 listed on pages 4-7 of this Order.
18

19 **Position of the Parties**

20 Petitioners contend that several of the performance standards established by the
21 County for special events are subjective and, because they would be hard to enforce, they
22 cannot be effectively used to enforce compliance.
23

24 Respondent contends that not only has the County directly used the language
25 identical to that in the GMA, they have supplemented it with additional County required
26 criteria. In short, Respondent states that the County does not need more specific
27 performance standards. In addition, Respondent contends that Petitioners are focused on
28 whether the County adequately enforces its performance standards and this is a land use
29 permitting issue, a Land Use Petition Act (RCW 36.70C) issue, which is not under the
30 jurisdiction of the Growth Management Hearings Board.
31

32

⁴³ Respondent's Brief, p. 26, and Ex. B, Alternative 3, Temporary Use Alternative, items i, j, and s, pp. 47 and 48 in the Petitioner's Prehearing Brief.

1 **Board Analysis of Issue 5:**

2 The Board notes that the County has included the key provisions of RCW 36.70A.177
3 and WAC 365-196-815 in its new zoning code regulations for nonagricultural accessory
4 uses. In particular, the following performance standards are part of its new temporary use
5 requirements:

- 6
- 7 • a. The property shall retain its agricultural identity and its capacity as
8 agricultural land . . .
 - 9 • c. The temporary use must be an accessory use to the parcel or lot and
10 cannot be the primary use on the parcel or lot . . .
 - 11 • e. The temporary use shall support, promote, or sustain agricultural
12 operations and production as provided in RCW 36.70A.177(3) . . .
 - 13 • f. The temporary use shall be located, designed and operated so as to not
14 interfere with, and to support the continuation of the overall agricultural
15 use of the property and neighboring properties . . .
 - 16 • i. The temporary use shall be consistent with the size, scale and intensity
17 of the existing agricultural use of the property and existing buildings on
18 the site. The area devoted to the temporary use shall not be located
19 outside the general area already developed for buildings and residential
20 uses, and shall not otherwise convert more than one acre of agricultural
21 land to nonagricultural uses.⁴⁴

22 Since the County's regulations include the key protective criteria and provisions of
23 the GMA and supplements them with additional performance standards, The Board
24 concludes that the Petitioners have failed to carry their burden of proof in demonstrating that
25 the County's performance standards are inadequate and therefore do not comply with RCW
26 36.70A.177 or WAC 365-196-815.

27 Although this issue is focused on the County's performance standards for
28 weddings/social events provided for by Resolution No. 14-0401, the Board believes the key
29 issue is whether these activities are compatible with continued farming, which is primarily
30 analyzed in issue number 1 above. The Board concludes that the Petitioners have failed to
31 carry their burden of proof in demonstrating that adoption of Resolution No. 14-1-0401
32 violated RCW 36.70A.177 and WAC 365-196-815 based on the alleged lack of enforceable
criteria to ensure compliance.

⁴⁴ Index No. 322, Resolution No. 14-0401, Ex. B for Alternative 3, pp. 6-7.

1 **ISSUE No. 6:** Should Resolution No. 14-0401 be declared invalid because it violated GMA
2 goals 5, 8, and 12 of RCW 36.70A.020?
3

4 **Applicable Law:**

5 **RCW 36.70A.302**

6 **Growth management hearings board — Determination of invalidity —**
7 **Vesting of development permits — Interim controls.**

8 (1) The board may determine that part or all of a comprehensive plan or
9 development regulations are invalid if the board:

10 (a) Makes a finding of noncompliance and issues an order of remand
11 under RCW 36.70A.300;
12

13 (b) Includes in the final order a determination, supported by findings of
14 fact and conclusions of law, that the continued validity of part or parts of the
15 plan or regulation would substantially interfere with the fulfillment of the goals
16 of this chapter; and

17 (c) Specifies in the final order the particular part or parts of the plan or
18 regulation that are determined to be invalid, and the reasons for their
19 invalidity.

20 **Position of the Parties**

21 Petitioners contend that the County's resolution violates GMA goals 5, 8, and 12 and
22 asks the Board to make a Determination of Invalidity for the challenged zoning changes
23 included in Resolution No. 14-0401. They argue that the changes are not consistent with
24 the County's Planning Policies, threaten agriculture and reduce the level of service on
25 County roads below adopted standards.
26

27 The County contends that since the uses allowed under this resolution are temporary
28 uses and there is no danger of vesting, there is no reason to make an invalidity
29 determination.
30
31
32

1 **Board Analysis of Issue 6, Invalidity:**

2 Since the Board did not makes a finding of noncompliance and issue an order of
3 remand under RCW 36.70A.300 for any of the issues cited by the Petitioners, the Board
4 cannot make a finding of invalidity in this case.
5

6 **VI. ORDER**

7 Based on the foregoing, the Board finds and concludes that Spokane County's
8 adoption of Resolution No. 14-0401 relating to nonagricultural accessory uses is compliant
9 with the GMA and this case is closed.
10

11 DATED this 7th day of January, 2015.
12
13

14
15 _____
16 Charles Mosher, Board Member
17

18
19 _____
20 Raymond Paoella, Board Member
21

22
23 _____
24 Nina Carter, Board Member
25
26

27 **Note: This is a final decision and order of the Growth Management Hearings Board**
28 **issued pursuant to RCW 36.70A.300.⁴⁵**
29

30 ⁴⁵ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all
31 parties within ten days of mailing of the final order. WAC 242-03-830(1); WAC 242-03-840.
32 A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days
as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent
upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings
Board is not authorized to provide legal advice.